IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Sensa Verogna, Plaintiff,)
v.) Case #: **1:20-cv-00536-SM**
Twitter Inc., Defendant.)

PLAINTIFF'S MOTION TO DECLARE TWITTER A "STATE ACTOR" UNDER LAW AND BRIEF AND MEMORANDUM IN SUPPORT

1. Plaintiff, pro se and proceeding anonymously as, "Sensa", respectfully moves this Court to declare Twitter, Inc., "Twitter", a "State Actor"[1] under the law, or minimally, as it applies to Sensa and within the timeframe of Sensa's COMPLAINT. Twitter, under Federal Authority, while enforcing Section §230, "§230", owed a duty to Sensa under Part I, Articles 22 and 32 of the New Hampshire Constitution and the U.S. Constitution Article [I] Freedom of expression not to discriminate against Sensa based on race or a viewpoint or behavior-based restriction in a public forum. Sensa submits the following brief and memorandum of law in support of his motion for relief pursuant to 28 U.S.C. §§ 2201 and Rule 57 of the Federal Rules of Civil Procedure. Jurisdiction is as stated in the COMPLAINT.

2. Venue is proper as stated in the COMPLAINT at Paragraphs 8, 9 and10. Sensa re-alleges and incorporates by reference each paragraph, tweet, article, exhibit or attachments included in this document and in the record to date, as though set forth fully herein.

3. Rather than regulating the internet like most all other industries, Congress instead chose to entwine themselves with companies like Twitter, essentially relegating it's duties to

protect, police and regulate free speech. Scarier is the fact that Twitter further relegates its policing powers to Journalists, who now regulate what American's can and cannot say in a public forum.

4. Twitter deleted Sensa's tweets and banned Sensa's contract under the presumed protections of §230 and through its Health Policies created, in part, to satisfy Congress while carrying out Executive duties of policing and punishing users within its public forum.

5. §230 deputizes computer network companies such as Twitter "to ensure vigorous

[1] As used in supporting brief and herein, "state action" refers to any governmental action that is Federal as it applies to this case enforcement of Federal and State criminal laws to deter and punish trafficking in obscenity, stalking, and harassment and to restrict obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected, and by means of computer in return for legal protections for third-party content, its filtering decisions and theoretically its banning decisions. Twitter's invocation and claims of authority under §230 is likely to unlock the door and circumvent the independent Constitutional protections of New Hampshire residents as users are unaware of their rights within the convoluted context of §230. Eg. Congress the boss and Twitter the Executive with policing powers.

6. The government itself may not deprive the individual" of his liberty "Free Speech", "Freedom to Assemble" and "Due Process rights without "Due Process of the Law." Government itself may not deprive the individual" without "due process of the law." The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security; while it forbids the State itself to deprive individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the

State to ensure that those interests do not come to harm through other means." See DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989).

7. It was said of the case of Dred Scott v. Sandford, that this court, there overruled the action of two generations, virtually inserted a new clause in the Constitution, changed its character, and made a new departure in the workings of the federal government. I may be permitted to say that if the recent amendments are so construed that Congress may not, in its own discretion, and independently of the action or non-action of the States, provide, by legislation of a direct character, for the security of rights created by the national Constitution; if it be adjudged that the obligation to protect the fundamental privileges and immunities granted by the Fourteenth Amendment to citizens residing in the several States, rests primarily, not on the nation, but on the States; if it be further adjudged that individuals and corporations, exercising public functions, or wielding power under public authority, may, without liability to direct primary legislation on the part of Congress, make the race of citizens the ground for denying them that equality of civil rights which the Constitution ordains as a principle of republican citizenship; then, not only the foundations upon which the national supremacy has always securely rested will be materially disturbed, but we shall enter upon an era of constitutional law, when the rights of freedom and American citizenship cannot receive from the nation that efficient protection which heretofore was unhesitatingly accorded to slavery and the rights of the master. (See 1883 U.S. LEXIS 928, 27 L. Ed. 835, 3 S. Ct. 18, 109 U.S. 3. (SCOTUS 1883)

8. For the reasons stated herein, and in the supporting brief and memorandum of law, this Court should declare that Twitter, Inc., a "State Actor" under the law, OR minimally, that it was, within the time frame of Sensa's Complaint.

Respectfully submitted,

/s/ Anonymously as Sensa Verogna

SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May 2020, I have contracted the foregoing Motion, to be served in hand, directly to the agent of record for Twitter Inc., The Corporation Trust Company Corporation, Trust Center, 1209 Orange Street, Wilmington, DE 19801.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Sensa Verogna, Plaintiff,)
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Twitter Inc., Defendant.)

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO DECLARE TWITTER A "STATE ACTOR" UNDER LAW

1. The Declaratory Judgment Act, 28 U.S.C. § 2201, is an enabling Act which confers a discretion on the courts. See Public Service Comm'n v. Wycoff Co., Inc., 344 U.S. 237 (1952)

2. Plaintiff, "Sensa" seeks a declaratory judgement and direction from the Court before taking any future action as such direction will afford Sensa relief from uncertainty or insecurity and not risk taking future undirected actions. See Amer. Household Products, Inc. v. Evans Manufacturing, Inc., 139 F.Supp.2d 1235, 1239 (N.D. Al. 2001); Cox v. Athens Reg. Med. Cent., 279 Ga. App. 586, 594, 631 S.E.2d 792, 799 (2006); (see also Baker v. City of Marietta, 271 Ga. 210, 214, 518 S.E.2d 879, 884 (1999)

3. Venue is proper as stated in the (Compl. ¶ 8, 9 and 10). Sensa re-alleges and incorporates by reference each paragraph, tweet, article, exhibit or attachments included in this document and in the record to date, as though set forth fully herein.

4. A declaratory judgement is an equitable tool used by courts to define the legal rights and obligations of parties. In a declaratory judgement action, there may be questions of law and fact for the trial court to decide. See New England Tel. & Tel. Co. v. CONVERSENT COMM. (D.R.I. 2001)

Background

5. On July 24, 2018 Congressman Ron Wyden a co-sponsor of §230 explains that:

> **"§230, provides both a "shield" and a "sword" to internet companies. The "shield" protects tech companies from liability for harmful content posted on their platforms by users. The "sword" refers to the §230's "Good Samaritan" clause, which gives tech companies legal cover for choices they make when moderating user content."**

6. **"It creates a government kind of information police—censorship, information police,"** Senator Ron Wyden (D-Oregon) told Wired in 2019. https://www.wired.com/story/fight-over-section-230-internet-as-we-know-it/

7. On September 5, 2018, Chairman Walden, led off an Oversight Hearing of United States House Committee on Energy and Commerce Committee by stating;

> **Chairman Walden: "So, Mr. Dorsey, I am going to get straight to the heart of why we are here today. We have a lot of questions about Twitter's business practices including questions about your algorithms content management practices, and how Section §230's safe harbors protect Twitter."** See Compl. Exh. Q-2
>
> **Mr. Dorsey: "We continue to work with our law enforcement partners on this investigation."** See Compl. Exh. Q-1, Pg. 10
> **Mr. Dorsey: We will remain engaged with law enforcement.** See Compl. Exh. Q-1, Pg. 11

8. On September 5, 2018, Jack Dorsey, CEO of Twitter, testified verbally to the United States House Committee on Energy and Commerce that Twitter relies on governmental guidance and benefits it receives through §230, and stated, in part;

> **2396 Mr. Dorcey; "Well, we do defend Section §230 because it is the thing that enables us to increase the health in the first place. It enables us to look at the content and look for abuse and take enforcement actions against them accordingly."**
>
> **2601 Mr. Dorcey; "We have made our singular objective to -- as a company to help improve the health of the content that we see**

on the service, and for us that means that people are not using content to silence others or to harass others or to bully each other so that they don't even feel safe to participate in the first place and that is what CDA §230 protects us to do is to actually enforce these actions -- make them clear to people in our terms of service but also to enforce them so that we can take actions."

2600 Mr. Dorsey: "So, people are responsible for their content. We have made our singular objective to -- as a company to help improve the health of the content that we see on the service, and for us that means that people are not using content to silence others or to harass others or to bully each other so that they don't even feel safe to participate in the first place and that is what CDA §230 protects us to do is to actually enforce these actions -- make them clear to people in our terms of service but also to enforce them so that we can take actions."

9. On September 5. 2018, Jack Dorsey, CEO of Twitter, testified verbally to the United States House Committee on Energy and Commerce, and stated, in part;

466 Mr. Pallone. "But we have to make sure that the enforcement mechanism is there."

3299 Mr. Dorsey: "So we are doing a few things. First, we are opening portals that allow partners and journalists to report anything suspicious that they see so that we can take much faster action."

1577 Mrs. McMorris Rodgers. "What are the current policies for prioritizing timely take downs and enforcement?"

1580 Mr. Dorsey. "Yes. So, any sort of violent threat or image is at the top of our priority list in order to review and enforce, and we do have a prioritization mechanism for tweets as we get the reports."

2999 Mr. Dorsey. "our decisions to these technologies, whether they be companies like ours who are offloading our enforcement actions to algorithms or ranking actions to algorithms or even personally."

3305 Mr. Dorsey. "we have a much stronger partnership with law enforcement and federal law enforcement to make sure that we are getting a regular cadence of meetings

3668 Mr. Dorsey. We do -- we do have partnerships with local enforcement and law enforcement agencies all over the world and we did inform them, as necessary.

2773 Mr. Griffith. if you do put the kibosh on somebody's post or somebody's Twitter account, can you at least tell them about it so that they have some idea so they can do the appeal? Because if they don't know about it, they're not likely to appeal, are they?

2780 Mr. Dorsey. Yes. We need a much more robust way of communicating what happened and why and also a much more robust appeals process.

10. On September 5. 2018, various Congress persons asked Mr. Dorcey if he could "Report back" or "get back to them" concerning a wide variety of subjects they discussed in the oversight hearing. They stated, in part;

447 through the chairman if you could get back to us.
455 I am going to ask you to get back to us in writing
468 Let me -- let me ask, if you could report back
486 please get back to us within the month.
511 if we could get a report
512 back to the committee within one month of the steps that Mr. Dorsey is taking, I would appreciate it.
2230 I am hoping that in the hours after this hearing you will get back to us
3543 So if you can report to us

3581 Mr. Flores. This is an oversight hearing.

11. Oversight hearings review or study a law, issue, or an activity, often focusing on the quality of federal programs and the performance of government officials. Hearings also ensure that the executive branch's execution goes with legislative intent, while administrative policies reflect the public interest. Oversight hearings often seek to improve the efficiency,

economy, and effectiveness of government operations. The Congressional Research Service describes oversight hearings as;

> Congress has historically engaged in oversight of the executive branch—specifically the review, monitoring, and supervision of the implementation of public policy. Oversight hearings are one technique a committee can use in this evaluation. Hearings may be held because a committee has a commitment to review ongoing programs and agencies or because it believes that a program is being poorly administered or that an agency is unresponsive to the panel. A committee may also hold an oversight hearing when a program under its jurisdiction is set to expire and needs to be reauthorized in order to continue. (See Congressional Research Service 7-5700 www.crs.gov 98-317).

12. On or around April 12, 2019 Speaker Nancy Pelosi (D-Calif.) said during a podcast interview "that a key legal protection for tech firms could be "in jeopardy," saying a 1996 statute [§230] was a "gift" to the industry." And that "It [§230] is a gift to them and I don't think that they are treating it with the respect that they should, and so I think that that could be a question mark and in jeopardy," Pelosi also added that "it is "not out of the question" that Section §230 could be removed". And when we come to §230, you really get their attention," Pelosi said, referring to the tech companies. "But I do think that for the privilege of §230, there has to be a bigger sense of responsibility on it. And it is not out of the question that that could be removed."

13. Some GOP lawmakers, including Sens. Ted Cruz (Texas) and Josh Hawley (Mo.), have also threatened publicly to alter or repeal §230.

14. Josh Hawley (Mo.), has also stated publicly that "'Big Tech' is subsidized by taxpayers and that Big Tech' gets a huge handout from the federal government. They get this special immunity, this special immunity from suits and from liability that's worth billions of dollars to them every year".

Complaint

15. "The injury caused" by Twitter to Sensa and others —the deprivation of free speech rights for posting political views and freedom to assemble thereafter through banning, is most certainly aggravated in a unique way as Twitters' boardroom is led by executives who seek guidance and directives from Congress, content–policy teams led by employees, content moderators, independent contractors, others, in and a part of "Twitter's Workforce" who draft respective public forum' content rules, review complaints about content, and speech and behavior infractions all under the guidance and authority of §230. Even if [its] rules were produced by private consulting firms, it's not unusual for the government to hire private consulting firms and regardless, they have or would have been guided by the municipal or federal powers within the principles of §230 in the formation and the application of those rules used towards U.S. Citizens. Twitters Workforce was in fact working under the direction of Congress to aid in the policing and enforcement of §230.

16. Twitter, as a State Actor, owed a duty to Sensa under Part I, Articles 22 and 32 of the New Hampshire Constitution and the U.S. Constitution Article [I] Freedom of expression not to discriminate against Sensa based on a viewpoint or behavior-based restrictions in a public forum.

17. Twitter is a state actor who, for its own economic benefit of legal protection, acted on behalf of Congress and through §230 to knowingly deny Sensa's both his State and US Constitutional rights and is therefore subject to regulation under the United States Bill of Rights, including the First, Fifth, and Fourteenth Amendments, which prohibit Federal and State governments from violating certain rights and freedoms.

Legislative History

18. On June 30, 1995 Christopher Cox (R-CA) and Ron Wyden (D-OR) introduced the Internet Freedom and Family Empowerment Act. It was then referred to the Subcommittee on Telecommunications and Finance on July 10, 1995 and then passed by a near-unanimous vote on the floor. From there it merged into Communications Decency Act of 1995', Section §230, in early 1996 where it passed by a near-unanimous vote on the floor, 81-18. Upon review of the Congressional Record, with limited resources, it is void of any mention or debate or finding related to "Free Speech".

19. Findings by Congress found that the Internet and other interactive computer services have flourished….. with a minimum of government regulation, offer a forum for a true diversity of political discourse and increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services. See § 230(a)

20. Congress then promulgated within § 230(b), United States policy intended to promote the Internet, (b)(1), preserve a competitive free market unfettered by Federal or State regulation, (b)(2), empower parents to restrict their children's access to objectionable or inappropriate online material, (b)(4), and to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer. (b)(5).

21. Congress then implemented protections under § 230(c) states:

> **(c)PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL**
>
> **(1)TREATMENT OF PUBLISHER OR SPEAKER**
> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
>
> **(2)CIVIL LIABILITY** No provider or user of an interactive computer service shall be held liable on account of—
>
> **(A)** any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene,

> lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
> **(B)** any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

22. Congress, through § 230(d) placed only 1 obligation upon interactive computer services to "notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors."

The Public Function Test

23. The Supreme Court reiterated the distinction of State Action on more than one occasion. See, e. g., Evans v. Abney, 396 U.S. 435, 445 (1970); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 171-179 (1972)

24. Subsequent discussion in Burton made clear, the dispositive question in any state-action case is not whether any single fact or relationship presents a sufficient degree of state involvement, but rather whether the aggregate of all relevant factors compels a finding of state responsibility. See generally Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972)

25. The Supreme Court has organized a factual inquiry around two conditions it has found necessary for a finding of state action. To constitute state action: (1) "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." See Lugar, 457 U.S. at 937; See Georgia v. McCollum, 505 U.S. 42, 50-51 (1992). (holding scheme created by statute satisfied first prong of test.), and with these tests, address the essential question of whether

the government is responsible in some way for the conduct of which plaintiff complains. (See Blum v. Yaretsky, 457 U.S. 991, 1004 (1982); See Edmonson, 500 U.S. at 632.

26. The second inquiry is whether the private party charged with the deprivation can be described as a state actor. See Lugar v. Edmondson Oil Co., Inc., 457 U.S. 941-942 (1982). In resolving that issue, the Court in Edmonson found it useful to apply three principles: (1) "the extent to which the actor relies on governmental assistance and benefits"; (2) "whether the actor is performing a traditional governmental function"; and (3) "whether the injury caused is aggravated in a unique way by the incidents of governmental authority." See Edmonson v. Leesville Concrete Co. 500 U.S., at 621-622. (SCOTUS 1991)

27. In past rulings, the First Federal Court has stated that "[A] private entity will be deemed "a state actor if (1) it assumes a traditional public function when it undertakes to perform the challenged conduct, or (2) an elaborate financial or regulatory nexus ties the challenged conduct to the State, or (3) a symbiotic relationship exists between the private entity and the State.". See, e.g., Perkins v. Londonderry Basketball Club, 196 F.3d 13, 18 (1st Cir.1999) See also Barrios-Velazquez v. Asociacion De Empleados, 84 F.3d 487, 491-94 (1st Cir.1996). Other District Courts have added the requirement that "where the state has exercised coercive power or has provided such significant encouragement, either overt or covert that the action of the private party must in law be deemed to be that of the state." See Lewis v. Law-Yone, 813 F. Supp. 1247, 1254 (N.D.Tex.1993) (quoting Blum, 457 U.S. at 1004, 102 S. Ct. 2777); see also Jackson v. Metro. Edison Co., 419 U.S. 345, 357, 95 S. Ct. 449, 42 L. Ed. 2d 477 (1974)

28. Courts have found state action present in the exercise by a private entity of powers traditionally exclusively reserved to the State. See, e.g., Nixon v. Condon, 286 U. S. 73 (1932)

(election); Terry v. Adams, 345 U. S. 461 (1953) (election); Marsh v. Alabama, 326 U. S. 501 (1946) (company town); Evans v. Newton, 382 U. S. 296 (1966) (municipal park). Conduct that is formally "private" may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action.

29. If a private actor is engaged in inherently governmental functions, or if the government delegates the operation of one of its traditional and quintessential functions to a private actor, then the private actor will be deemed to be a state actor subject to constitutional limitations. See NCAA v. Tarkanian, 488 U.S. 179, 195 (1988); Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 163-64 (1978); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 349-50 (1974); Evans v. Newton, 382 U.S. 296, 299 (1966), ("When private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations."). See Marsh v. Alabama, 326 U.S. 501, 506 (1946)

30. The rationale for the doctrine is equally clear. "The fact that the government delegates some portion of [its] power to private [actors] does not change the governmental character of the power exercised.'" Without the public function doctrine, the government could circumvent constitutional proscriptions on its power merely by delegating important governmental functions to theoretically private entities. The public function doctrine thus requires the courts to look behind the State's decision to provide such services through a private entity. See Jackson, 419 U.S. at 371 (Marshall, J., dissenting)

31. Courts struggle with the doctrine has been definitional - which government functions are "so intimately associated with our concept of sovereignty that the state ought not be permitted to authorize [their] exercise by a private party without the same degree of protection that would apply if the sovereign itself were conducting [the function?] See The Supreme Court, 1977 Term, 92 HARV. L. REV. 57, 128 (1978)

32. When Congress enacted § 1983 as the statutory remedy for violations of the Constitution, it specified that the conduct at issue must have occurred "under color of" state law; thus, liability attaches only to those wrongdoers "who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." See Monroe v. Pape, 365 U.S. 167, 172 (1961). As stated in United States v. Classic, 313 U.S. 299, 326 (1941)

33. "[P]rivate actors may align themselves so closely with either state action or state actors that the undertow pulls them inexorably into the grasp of 1983." See Roche v. John Hancock Mutual Life Insurance Co., 81 F.3d 249, 253-54 (1st Cir.1996)

34. In this case, Congress would be specifically responsible for the particular activity of which Sensa complains because they subbed Executive Authority to Twitter, and Twitter would be held responsible for its own misuse of that authority. See Blum, 457 U.S. at 1004-05 Id. at 1004.

State Actor

35. Twitter was transformed into a state actor based upon willful participation in joint action with the state or its agents, See Dennis v. Sparks, 449 U.S. 24, 27, 101 S. Ct. 183, 186, 66 L. Ed. 2d 185 (1980), and a State may delegate authority to a private party such as Twitter and

thereby make Twitter a state actor. (See National Collegiate Athletic Assn. v. Tarkanian (SCOTUS 1988).

36. Constitutional liability should attach to wrongdoers such as Twitter 'who carry a badge of authority through Congress and represent it in some capacity.', (See NCAA v. Tarkanian, 488 U.S. 179, 191 (1988) (quoting Monroe v. Pape), and because Congress cannot be allowed to shed so easily its constitutional limitations, these private actors function as a sort of substitute State.' In a very real sense, Twitter was performing a public function when it deleted Sensa's Tweet and banned him from the public forum and became an agent of the State. See West v. Atkins, 487 U.S. 42 (1988)

Delegation

37. Congress delegated governmental power to Twitter. It is that delegation of governmental enforcement authority that, for limited purposes, turned Twitter into state actors. (See 83 Note, Governmental Action and the National Association of Securities Dealers, 184 47 FORDHAM L. REv. 585, 595 (1979).

38. Even in Flagg, the Supreme Court's narrowest conception of the public function doctrine, intimated that a private party might be a state actor when exercising power delegated by the State to provide police protection. See FIagg Bros., 436 U.S. at 163. Through §230, Congress created the legal framework that governed Twitters conduct. (See North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); if it delegates its authority to the private actor. (See West v. Atkins, 487 U.S. 42 (1988)

39. Likewise, the enforcement of federal law, and the imposition of penalties, such as Twitter banning Sensa, (especially penalties not available in civil litigation) for such violations, are quintessential government functions. See Cf NCAA v. Tarkanian, 488 U.S. 179, 195-96 (1988)

Compulsion and Encouragement

40. Under §230, Twitter was encouraged to ferret out violations of federal law, they are also encouraged to punish the violators. See § 230(b)5. Both legal schemes amount to "compulsion of sovereign authority" and implicate constitutional protections. See Skinner v. Railway Executives' Ass'n, 489 U.S. Id at. 614 (1989)

41. State commandment through statutory enactment is such a strong basis for finding state action that a court is likely to find state action even if Twitter would have taken the same action independently of the existence of the statute. By enacting §230, Congress reserved for itself the decision as to whether what was fair speech, and it decided on obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected" When Congress commanded a particular result, it has saved to itself the power to determine that result and thereby "to a significant extent" has "become involved" in it, in fact, Congress removed that decision from the sphere of private choice. It has thus effectively determined that a person's Tweets are regulated and restricted from containing obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, material whether or not such material is constitutionally protected or not and that persons who traffic in obscenity, stalking, or harassment by means of computer can be punished.

42. "A State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert,

that the choice must be deemed to be that of the State." See Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). To the latter point, see Flagg Bros. v. Brooks, 436 U.S. 149, 166 (1978); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 357 (1974). Here Congress clearly indicated in the relevant regulation of §230 through its strong preference for punishing, and its desire to share the fruits of such intrusions in the interests of a booming internet. This encouragement, endorsement and participation in the private activity created state action. See Skinner at. 615-16.

43. Whether such a "close nexus" exists here depends on whether Congress "has exercised coercive power in threatening publicly to abolish §230 or threating Anti-Trust Regulations or by providing encouragement, either publicly or through Oversight Hearings or enforcement meetings, the choice must in law be deemed to be that of the Congress." Ibid. See Flagg Bros., supra, at 166; Jackson, supra, at 357; Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 173 (1972); Adickes v. S.H. Kress & Co., 398 U. S. supra, at 170 (1970); Action taken by private entities with the mere approval or acquiescence of the State is not state action. Blum, supra, at 1004-1005; Flagg Bros., supra, at 154-165; Jackson, supra, at 357.

44. Congress's involvement with §230 lends weight and authority for Twitter to facilitate the enforcement of its public forum. See Cf. Adickes v. S.H. Kress & Co., 398 U. S. 144 (1970); Reitman v. Mulkey, 387 U. S. 369 (1967); Railway Employes' Dept v. Hanson, 351 U. S. 225 (1956); Shelley v. Kraemer, 334 U. S. 1 (1948). (Quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974)

<u>Policing</u>

45. 28 U.S. Code § 2671 of the Federal Law Enforcement Officers' Good Samaritan Act of 1998 defines a "Federal agency" .. to include… corporations such as Twitter. In its limited

role, Twitter is a federal actor deputized to carry out an essential enforcement role of §230. Twitter exercised "powers traditionally exclusively reserved to the State." See Jackson v. Metropolitan Edison Co., 419 U.S. 345, 349-52 (1974), by enforcing §230 at the demand and under the supervision of Congress.

46. When enforcing §230, Twitter was exercising a delegated public function subject to constitutional limitations. See U.S. Const. art. 11, § 3 (stating enforcement of federal law is a power delegated to the Executive branch of the federal government); See also TRIBE, supra note 5, at § 4-11 (discussing Executive branch duties of law enforcement), and also means that this is not a situation that involves merely the resolution of private disputes. (See Flagg Bros., 436 U.S. at 157).

Constitutional Requirements

47. Section §1983 addresses itself to grievances inflicted "under color of any statute, ordinance, [or] regulation . . . of any State . . . ." The regulatory regime imposed by Pennsylvania on respondent utility seems to fit this statute like a glove. Electrical service, being a necessity of life under the circumstances of this case, is an entitlement which under our decisions may not be taken without the requirements of procedural due process. See Fuentes v. Shevin, 407 U.S. 67, 80 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970); Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (CA6 1973)

48. Similar in nature to this case, federal court cases have held that SROs are state actors when they engage in enforcement proceedings; See Intercontinental Indus., Inc. v. American Stock Exch., 452 F.2d 935, 941 (5th Cir. 1971) (stating that AMEX is a state actor); United States v. Sloan, 388 F. Supp. 1062, 1064 (S.D.N.Y. 1975) (noting that the proper remedy

for dismissal by the NYSE for claiming a Fifth Amendment privilege is a suit for denial of due process) a prerequisite of which is a determination that the NYSE is a state actor; Villani v. New York Stock Exch., 348 F. Supp. 1185, 1188 n.l (S.D.N.Y. 1972) (stating that NYSE is bound by due process requirements of Fifth Amendment), affd sub nom Sloan v. New York Stock Exch., 489 F.2d 1 (2nd Cir. 1973); Crimmins v. American Stock Exch., 346 F. Supp. 1256, 1259 (S.D.N.Y. 1972); Harwell v. Growth Programs, Inc., 315 F. Supp. 1184, 1188 (W.D. Tex. 1970) (stating that NASD is a state actor)

Summary

49. State action is present here because Twitter has a partnership with Congress through §230, and it provides an essential public service of performing law enforcement functions, which are required to be supplied on a reasonably continuous basis 230, and hence performs a public function and transforms Twitter into a State Actor.

50. Twitter, primarily acting as instrumentalities or agencies of the United States and local New Hampshire law enforcement agencies, chose to be a "Good Samaritan" in carrying out the wishes of Section §230 and converts a private entity like Twitter into a state actor or is equivalent to state action—because the private entity [Twitter] is voluntarily performing a traditional, exclusive public functions such as regulating criminal and non-criminal speech and behaviors at a local and State level.

51. Twitter does in fact "police" it's public forum at the direction of the Federal Government and Congress which enables it to take enforcement actions against those that Congress believes to be law breakers of obscenity, disturbing the peace, fighting words, or in Twitters case in which it "police(s)" "behaviors", which are all policing powers traditionally

performed by local police, departments or municipalities which are generally considered State actions. This, in effect, turns Twitters operation into a governmental function that serves public interest and to which they receive "benefits" of Executive status in the form of legal immunity and in the savings of legal fees in return for policing it's designated public forum under the government created §230. Twitter also benefits from §230 as they use it as a authoritive bully whip upon its users without any retribution or due process rights afforded to users like Sensa. Twitter also leverages and benefits in the use of §230 as it is instrumental in producing and enforcing its own Health Policies and even brazened them to promulgate a new Health Policy that now polices "behaviors" that are routinely protected by the States through their prospective Constitutions or local criminal laws.

52. Private individuals and corporations, exercising public functions, or wielding power under public authority, without liability and through direct primary legislation of Congress, tread on the rights of free speech and due process rights under the US and New Hampshire Constitutions.

Twitter has wrapped itself in 230

53. Twitter, willfully participating and acting in accordance with their authority through 230, deprived Sensa of his Constitutional rights. Twitter, entwined with governmental policies, members of Congress and the President has become so impregnated with government character and therefore should be subject to constitutional limitations placed upon state action. It can also be fairly stated that Twitter, having to answer to Congress, the United States Attorney General, honorable, William Barr and the President of the United States regarding Twitters use of

230 suggests coercive power. (See Affidavit, Exhibit A, in support of this motion, Executive exercise of coercive power).

54. It is because Congress delegated to Twitter Executive policing powers through 230 by which Sensa was injured. Twitter, endowed by 230 acted as an instrument of Congress. Twitter also has a symbiotic relationship with Congress through 230 to which it assumed the traditional Constitutional and Executive duties of policing speech and other criminal acts which are enforced by State and Local Law Enforcement Agencies, and was in fact acting for Congress and relied on governmental assistance to police its public forum and received many benefits for its work.

55. For the reasons stated herein, and in the supporting brief and memorandum of law, and all that is attached, this Court should declare that Twitter, Inc., a "State Actor" under the law, OR minimally, that it was, within the time frame of Sensa's Complaint.

PRAYER FOR RELIEF

WHEREFORE, as there is a substantial likelihood that Sensa will succeed on the merits of his claims, Sensa seeks the following relief in this action;

Declare Twitter, Inc., a "State Actor" under the law, OR minimally, that it was, within the time frame of Sensa's Complaint.

Respectfully submitted,

/s/ Anonymously as Sensa Verogna
SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May 2020, I have contracted the foregoing Brief, to be served in hand, directly to the agent of record for Twitter Inc., The Corporation Trust Company Corporation, Trust Center, 1209 Orange Street, Wilmington, DE 19801

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO DECLARE TWITTER A "STATE ACTOR" UNDER LAW

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